

March 25, 2008

**Secretary of State Interpretation
Number: 08-23-01**

Question: When verifying documents pertaining to a petition seeking the recall of public officer, is a county clerk required to verify whether the signatories to the petition actually voted in the election in which the officer was elected? Similarly, is a county clerk required to verify whether the address included with the signature on a petition matches the address in the file of applications to register to vote?

Analysis

First, with respect to verification of whether the petition signatories actually voted in the election in which the officer was elected, Article 2, Section 9 of the Nevada Constitution states, in relevant part, that “not less than twenty-five percent (25%) of the number who actually voted in the state or in the county, district, or municipality which he represents, at the election in which he was elected, shall file their petition...demanding his recall by the people.” The plain and unambiguous language of this provision requires that a recall petition must be signed by at least 25% of the voters *who actually voted* at the election in which that public official was elected.¹

The Nevada Supreme Court has reviewed this provision in Foley v. Kennedy, 110 Nev. 1295, 885 P.2d 583 (1994). In Foley, the court addressed two issues, the first of which dealt with the proper election to be used in determining the number of signatures needed for a recall petition. In its ruling, the court stated:

¹ This understanding of Article 2, Section 9 is consistent with the legislative record and the intent behind the amendment to the constitution. See Minutes of the Senate Committee on Government Affairs, July 1, 1993, at page 5.

According to the referenced constitutional provision, twenty-five percent of the persons who actually voted in the relevant political division in the preceding general election shall file their petition for recall. Thus, twenty-five percent of the persons who voted in the general election preceding the filing of the petition must sign the recall petition.²

110 Nev. at 1299.

Second, with respect to whether a county clerk is required to verify whether the address included with the signature on the petition matches the address in the file of applications to register to vote, NAC 293.185 states:

1. If, while verifying signatures pursuant to NRS 293.1277, a county clerk discovers that an address included with a signature does not match the address for the registered voter who signed the petition as indicated in the file of applications to register to vote, the clerk shall notify the registered voter of the discrepancy.
2. A county clerk shall not verify any signature for a person who has been notified of a discrepancy pursuant to subsection 1 unless the person demonstrates to the satisfaction of the clerk that the person is a registered voter of the State, county district or municipality which is applicable for the ballot question or office that is the subject of the petition.

Additionally, NRS 293.1276 to 293.1279, inclusive, address the proper verification procedures regarding petitions to recall a public officer. *See* NRS 306.035. A plain reading of the statutes and recently adopted provisions of Nevada Administrative Code require that a county clerk verify that the signature on the petition corresponds to the address indicated in the file of applications to register to vote. If the address included with the signature on the petition does not match the address in the file of the application to register to vote, the clerk shall notify the registered voter of the discrepancy. It is the opinion position of this office that, in accordance with the adopted regulation, proper notice of a discrepancy pursuant to subsection 1 may

² Notably, the *Foley* court addressed the former Article 2, Section 9, which read “For this purpose, *a number of registered voters* not less than twenty five per cent (25%) of the number who actually voted in the state or in the county, district, or municipality electing said officer, at the preceding general election, shall file their petition...demanding his recall by the people...” (Italics added).

include, but is not limited to, written notice mailed to the addresses of the signatory, posting a list of names of deficient signatures on a public website, or placing a phone call to the signatory to notify the registered voter of the discrepancy. Any of the previously mentioned means of notification, or a combination thereof, would satisfy the regulatory notification requirement of NAC 293.185.

Conclusion

Accordingly, it is the understanding of this office that the plain language of the Nevada Constitution, Nevada Revised Statutes and Nevada Administrative Code must control. Therefore it is the duty of the county clerk to verify that:

1. The signatories of a recall petition actually voted in the election in which the officer subject to the petition was elected.
2. The address included with the signature on a petition matches the address in the file of applications to register to vote

Respectfully,

A handwritten signature in black ink, appearing to read 'Ross Miller', with a stylized flourish at the end.

ROSS MILLER
Secretary of State